WP(C) 4393/2003
BEFORE
THE HON'BLE MR. JUSTICE HRISHIKESH ROY

Heard Mr. N. N. Upadhyaya, learned counsel for the petitioner. Also heard Mr. S.C. Mallick, learned counsel, who appears for the respondent No.3, the Principal of B.H. College, Howly and Mr. S. Das, learned Standing counsel for the Education Department, representing respondent No.1 and 2.

2. The petitioner who was appointed as a lecturer in B.H. College, Howly, Barpeta w.e.f. 16.10.1992, is before the Court to claim that he is entitled to senior scale of pay with effect from an earlier date i.e. 23.07.1998 instead of 13.01.2000, as has been given to him by the Order dated 26.05.2000 passed by the Director, Higher Education, Assam (Annexure IV).

3. It is contended on behalf of the petitioner that U.G.C. circular dated 24.12.1998 (Annexure II), prescribes the criterion of senior scale. The learned counsel for the petitioner has referred to clause 7.2.0 of the said circular which is extracted herein below for ready reference:

\A Lecturer will be eligible for placement in a senior scale through a procedure of selection, if he/she has.

(i) Completed 6 years of service after regular appointment with relaxation of one year and two years, respectively, for those with M.Phil and Ph.D.

(ii) Participated in one orientation course and one refresher course of approved duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the University Grants Commission. (Those with Ph.D. degree would be exempted from one refresher course).

(iii) Consistently satisfactory performance appraisal reports.\

4. By referring to the said circular, the learned counsel for the petitioner contends that immediately after completing six years of service as a lecturer, the case of the petitioner should have been considered for placement in senior scale, as he fulfilled all the requirements of the U.G.C. circular dated 24.12.1998.

It is further contended that the petitioner has been deprived of his seniority and salary advantage by belated granting of senior scale of pay, since junior lecturers namely Sri D. Dutta of Bengali Department and Sri M.K. Kedia of Commerce Department of the same college have been given senior scale of pay w.e.f. 13.01.2000, although these two persons joined as lecturer only on 12.02.1994 and 06.01.1993 respectively, whereas the petitioner joined earlier on 26.10.1992.

5. Mr. Mallick, learned counsel appearing for B.H. College the respondent No.3, supports the case of the petitioner.

6. Mr. H. Das, learned Standing counsel of the Education Department on the other hand contends that as per the U.G.C. circular dated 24.12.1998, a lecturer is eligible for placement in a senior scale through a procedure of selection, provided such lecturer fulfils the requirements specified in clause 7.2.0., which also requires under Sub clause (iii) \Consistently satisfactory performance appraisal reports\.

7. Accordingly it is contended on behalf of the Department that mere completion of the prescribed qualifying 6 years of service is not enough, for placement in the senior scale. Only through a procedure of selection depending on the performance of the lecturer, the consideration for placement in the senior scale can be made.

8. It is further contended that nothing is placed on record by the petitioner as to when his case was recommended for placement in senior scale and accordingly the claim made to give effect to the entitlement of the petitioner to a higher scale from an earlier date i.e. 23.07.1998 may not be justified.

9. Mr. Upadhyaya, learned counsel for the petitioner in reply submits that the case of the petitioner for placement from the senior grade to selection grade, which requires 5 years of qualifying service as a senior grade lecturer, has not been considered because of delayed placement of the petitioner in the senior scale and the petitioner has missed his chance because he fell short of 5 years service only by 12(twelve) days.

10. However the learned counsel submits that, on orders of the Court, the petitioner has been permited to participate in the selection process for placement in selection grade and result of selection is now awaited.

11. Having considered the rival submission made and on perusal of the materials on record, I am of the view that placement in the senior scale is to be made through a procedure of selection and the performance of a lecturer is also to be taken note of, in such selection process. Therefore, the placement in the senior scale cannot be considered to be automatic merely because the lecturer has completed the requisite 6 (six) years of qualifying service. Therefore, there could be case where a lecturer can be considered unsuitable for being placed in the higher grade or he may be given the benefit at a later stage then immediately after completion of the qualifying years of service.

12. However in the present case, since the petitioner was found suitable for being placed in the selection grade, w.e.f. 13.01.2000, the eligibility of the petitioner for being placed in the selection grade is not in question. The only issue is whether such placement should have been made from an earlier date, then from the one given to the petitioner.

13. Having regard to the matter in its entirety and particularly in view of the fact that the petitioner is falling short of his chance to be considered for placement in the selection grade only by 12 (twelve) days because of delayed placement in the senior scale, it would be appropriate to permit the petitioner to make a representation before the respondent authorities to highlight his grievances in this regard. Such representation may be made within a period of two weeks from today.

14. On receipt of such representation, the respondent authorities would consider the representation on merit and if it is legally permissible to place the petitioner in the senior scale from a date earlier to 13.01.2000, such benefit may be given to him to enable him to be elgible for being considered for placement in the selection grade. Non-consideration of the petitioner now would deprive him of being considered and placed in the selection grade in due time.

16. The competent authority shall accordingly pass a reasoned order on the representation which is to be filed by the petitioner.

17. With the aforesaid directions, this writ petition stands disposed of.